

BEFORE THE BOARD OF OIL, GAS AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
IN AND FOR THE STATE OF UTAH

**FILED**

**JUL 11 2005**

**SECRETARY, BOARD OF  
OIL, GAS & MINING**

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IN THE MATTER OF THE PETITION	:	
BY THE DIVISION OF OIL, GAS AND		
MINING FOR AN ORDER DIRECTING	:	NOTICE OF AGENCY ACTION
THE ATTORNEY GENERAL TO RECOVER		
CIVIL PENALTIES, WITHDRAWING	:	
THE NOTICES OF INTENTION, AND		
REQUIRING IMMEDIATE RECLAMATION	:	
OR FORFEITING SURETIES FOR		
THE APEX/BURGIN MINE (M/049/009),	:	DOCKET NO. 2005-013
TRIXIE SHAFT MINE AREA (M/049/024),		
AND THE TRIXIE WEST EXPLORATION	:	CAUSE NOS. M/049/009
AREA (E/049/046); THE CHIEF		M/049/024
CONSOLIDATED MINING CO. d/b/a	:	E/049/046
CHIEF GOLD MINE, SOUTH STANDARD		
MINING COMPANY, and TINTIC UTAH	:	
METALS, LLC.; IN SECTIONS 11, 15, 21,		
22, and 28, TOWNSHIP 10 SOUTH,	:	
RANGE 2 WEST, SLB&M; UTAH		
COUNTY, UTAH	:	

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**RELIEF SOUGHT**

The Division of Oil, Gas and Mining ("Division") hereby petitions the Board of Oil, Gas and Mining ("Board") for an Order: (1) authorizing the Attorney General to take such action as necessary against Chief Consolidated Mining Company (Chief or Operator) including filing an action to recover the fees and penalties assessed in association with the Cessation Orders issued, unabated, and unpaid, together with interest, costs and attorney fees as allowed; (2) withdrawing the existing Notices of Intention held by Chief Consolidated Mining Company for each of the mine sites under permit: (a) due to the Operator's failure to abate the Cessation Order issued October 14, 2004; (b) for continued suspension in excess of five years and other actions, including lack of personnel at the site, lack of any mining activities for a long period of time, failure to respond to correspondence concerning the status of bonding, and other acts indicating abandonment of the mining operations and a lack of ability to proceed with mining and reclamation of the site as required by the Utah law and the Mining and Reclamation Plan; and (c) inadequate bonding; (3) requiring Chief Consolidated Mining Company, as the mine operator, to commence immediate reclamation of all pertinent lands affected by the mining operations; and (4) ordering that in the event required reclamation is not immediately commenced by Chief Consolidated Mining Company, that surety be forfeited to the Division and the Division be authorized to proceed with reclamation of the mine site and to seek recovery of costs and expenses of reclamation from the responsible parties in any appropriate court. The mine is

located in portions of Sections 11, 15, 21, 22, and 28, of T10S, R2W, SLB&M, Utah County, Utah.

### **JURISDICTION**

1. This action is brought by the Division pursuant to the Utah Mined Land Reclamation Act, Utah Code Annotated §§40-8-1 *et seq.* (2005) (hereinafter the Act).
2. Jurisdiction over this matter is conferred upon the Board by Utah Code Annotated §40-8-6(2) (2005) which empowers the Board "to hold hearings and to issue orders" as may be necessary to enforce the provisions of the Act.
3. Utah Code Annotated §40-8-16(3) (2005) provides that a Notice of Intention may not be withdrawn until the operator is provided an opportunity for a hearing before the Board.
4. Utah Code Annotated §40-8-9.1(4) (2005) provides for the Board to request the Attorney General to bring an action to collect civil penalties resulting from violations of the Act.

### **NOTICE REQUIREMENTS**

5. Pursuant to Utah Code §§63-46b-6 to 63-46b-11 (2005), the hearing will be conducted formally.
6. The hearing will be held at the regularly scheduled meeting of the Board to be held on August 24, 2005 at 10:00 a.m. A written response or objection must be filed with the Board within twenty days of mailing of this Request for Agency Action. Any party who fails to respond, or to appear at said hearing, may be held in default.
7. The names and addresses of all persons to whom Request for Agency Action shall be given are attached as the CERTIFICATE OF SERVICE and by this reference incorporated herein.

### **STATEMENT OF THE FACTS**

8. The Notice of Intention for the Burgin Mine (M/049/009) was issued on June 3, 1985 to Tintic Utah Metals, LLC.
9. The Notice of Intention for the Trixie Shaft Area, M/049/024 was issued December 10, 1993 to South Standard Mining Company.
10. The Notice of Intention for Trixie West Exploration Permit Number E/049/046 was issued to Chief Gold Mines, Inc. on July 16, 1995.

11. The interests of the prior Operators in the above named Notices of Intention including the interests of Chief Gold Mine, Inc., Tintic Utah Mining, and South Standard Mining Company, and others are believed have been acquired by, and are now owned or controlled by Chief Consolidated Mining Company who is currently understood to be the Operator of all of the mining operations under the Notices of Intention. As used herein the term Operator shall refer to Chief Consolidated Mining Company, as successor in interest to the rights and duties of the original and prior operators under the Notices of Intention subject to this action.

**COUNT I (Collection of fines and Penalties)**

12. On January 29, 2003 an updated reclamation surety was requested by certified letter, and an update of the current operations and status. After completion of a site inspection conducted February 6, 2003, a certified letter was hand delivered to Arden Underwood by the Division inspector advising of concerns and need for update of surety.
13. On April 18, 2003 a copy of the January 29, 2003 letter was sent by certified mail, addressed to Richard Schreiber, CEO of Chief. The letter was received April 28, 2003 and Mr. Schreiber replied by telephone that there were negotiations 'on going' with United States Environmental Protection Agency (EPA) and that mining operations were suspended.
14. On September 8, 2003, a second request for permit fees was sent advising the Operator that the mining permit was suspended until fees were paid.
15. On October 7, 2003, the Division attempted to contact the mine operators and discovered that the phones were disconnected.
16. On August 10, 2004, a second delinquency notice was sent by certified mail advising the Operator of the failure to pay the fees owed for years 2003 and 2004.
17. On October 8, 2004, Cessation Orders were mailed to Mr. Richard Schreiber, on behalf of the Operator, assessing fines for failure to pay fees for each of the permits for the past two years and advising him of the obligation of the Operator to abate the order by payment within 14 days. The assessments made and sent to Mr. Schreiber for each permit are as follows: (a) on behalf of Tintic Utah Metals, LLC, Trixie West Exploration Project, Permit E/049/046, the amount of \$300.00 (past and current fees of \$150.00 for each year); (b) for Chief Gold Mines, Inc. Permit M/049/024, \$1000.00 (past and current fees of \$500.00 for each year); and (c) for Tintic Utah Metals, LLC for the Apex/Burgin Project, Permit M/049/009, \$2000.00 (past and current fees of \$1000.00 per year). The Cessation Orders were each signed as received by Evelyn Quirk on behalf of the addressees at 1629 Locust St., Philadelphia, PA. on October 14, 2004. The total of the

past unpaid fees was \$3300.00.

18. On November 4, 2004, a proposed assessment for each of the violations was made and notice of the determination was mailed to Richard Schreiber for each permit together with a notice of a right to appeal within thirty days, and a warning that if timely request for review was not filed the penalties would become final. The amount of penalty as determined and communicated for each permit was follows: (a) for the Tintic Utah Metals, LLC, Trixie West Exploration Project, Permit E/049/046, a proposed fine of \$1,100.00; (b) for Chief Gold Mines, Inc. Trixie Shaft, Permit M/049/024, a fine of \$1100.00; and (c) for Tintic Utah Metals, LLC Apex/Burgin Project, Permit M/049/009, a proposed fine of \$1100.00. The total of the proposed fines was \$3,300.00.
19. On November 5, 2005, Chief requested a "90 day extension or moratorium on further fines" while the pending Consent Decree concerning a proposed United States Environmental Protection Agency Superfund cleanup project for Eureka City was under consideration. Approval of the Superfund project was claimed to be critical to continued mining activity, as it would limit the future liability of Chief Consolidated for cleanup costs. If not approved, Chief claimed it would need to file for bankruptcy protections.
20. In response to this request, on November 5, 2004, an extension of the abatement time was granted, allowing abatement to continue until January 12, 2005 (for the maximum allowable period of 90 days).
21. On January 3, 2005 Chief requested an additional '90-day extension' based on the setting of the hearing for consideration of the Consent Decree for January 24, 2005.
22. Based on the extraordinary reasons, a further extension of 45 days was granted, extending the time for abatement until February 28, 2005.
23. On January 24, 2005 the Consent Decree was approved by the court.
24. On March 8, 2005 a letter was sent to Chief summarizing the outstanding obligations as of that date, (total fees of \$3300.00 and penalties of \$3,300.00 or a total of \$6,600.00), advising that the amounts were final since no appeal was made, and advising that further action may result in further penalties of \$750.00 per day.
25. On March 17, 2005 Chief requested a further extension of the time on further enforcement actions, and the Division replied on April 12, 2005, that a 60-day extension would be considered if Chief accomplished specific tasks. No reply was received to the April 12, 2005 request.
26. On May 24, 2005, a Failure to Abate Cessation Order was issued by the Division and mailed to Chief Consolidated Mining Company for each permit by certified mail. These Orders and attached letter advised Chief that the Failure to Abate Cessation Order

included a mandatory additional penalty of \$750.00 per day for each permit for each day the violation continued.

27. There has been no appeal of the Failure to Abate Cessation Order and no payment of the penalties or permit fees by Chief, or any other party.
28. The total amount of unpaid fees and penalties including the \$750.00 per day fees assessed for the thirty day period of appeal for all permits is as follows: a) for the Tintic Utah Metals, LLC, Trixie West Exploration Project, Permit E/049/046, fees of \$300, a proposed fine of \$1,100.00, mandatory penalty \$22,500.00 (\$23,900.00); (b) for Chief Gold Mines, Inc. Trixie Shaft, Permit M/049/024, permit fees of \$1000.00, a fine of \$1100.00; mandatory penalty of \$22,500.00 (\$24,600.00); and (c) for Tintic Utah Metals, LLC Apex/Burgin Project, Permit M/049/009, permit fees of \$2000, a proposed fine of \$1100.00, and mandatory penalty of \$22,500.00 (\$25,600.00). The total of the unpaid fees, fines and penalties is \$74,400.00. Permit fees for 2005 are now also past due.
29. Utah Code §40-8-9.1(4) provides that civil penalties owed may be recovered in a civil action brought by the Attorney General at the request of the Board.
30. The Division believes that an action to recover the foregoing fees and penalties is appropriate and necessary to accomplish the purposes of the Division and to insure that mined lands are reclaimed and to prevent conditions detrimental to the general safety and welfare of the citizens of the State of Utah.

### **COUNT II (Withdrawal of Permit)**

31. The Division hereby incorporates the allegations of paragraphs 1- 30 hereof and further alleges as follows.
32. Utah Code §40-8-16(2)(a) (2005) provides that a large mine permit may be withdrawn if the “operator substantially fails to perform reclamation or conduct mining operations so that the approved reclamation plan can be accomplished.”
  - A. The operator has been ordered to suspend mining until the cessation orders issued have been abated. It has now been over two years that the Operator has failed to pay the fees, file the reports, or pay the fines assessed.
  - B. The Operator has not responded to the correspondence from the Division requesting that the fees be paid and other correspondence concerning the status of the surety bonds held by the Division.
  - C. The Operator has suspended all activities at the mine since 2002 and has had no meaningful mining activities at the site since 1994.
  - D. The ability of the operator to complete reclamation of these sites according to the reclamation plan is now very unlikely and in substantial jeopardy.

- E. The cost of reclamation is increasing due to the age of the mine and increases in cost of reclamation work and the Operator's lack of personnel at the mine, lack of correspondence and apparent abandonment which warrants action to begin reclamation immediately.
  - F. Requests to the Operator for information "sufficient to evaluate the status of the mining operations and probable future status of the lands affected, and why reclamation should not be required to begin immediately" have not been answered.
33. Utah Code §40-8-16(2)(b) (2005) provides that a large mine permit may be withdrawn if the "operator fails to maintain surety as may be required under this chapter."
- A. The amount of surety was not increased in 1997 and again in 2002 and should be increased as required to update the amount of surety to current costs.
  - B. The form of the certain certificates of deposit are inappropriate and the Operator has failed to respond to requests to modify the form of the sureties.
34. Utah Code §40-8-16(2)(b) (2005) provides that a large mine permit may be withdrawn "in the event mining operations are continuously shut down for a period in excess of five years, unless the extended period is accepted upon application of the operator."
- A. Mining activities other than maintenance of the mine ceased before 1997.
  - B. The suspended status has also ceased and there has been no responsible operational or management personnel at the mine since 2002.
  - C. It is no longer possible to contact personnel willing to correspond with the Division and to assume the duties of filing reports, protecting the mine properties, or performing the actions required of an operator.

**COUNT III (Order for Immediate Reclamation)**

35. The Division hereby incorporates the allegations of paragraphs 1- 34 hereof and further alleges as follows.
36. The purposes and intentions of the Act are to insure that mined lands have reclamation plans (see Utah Code §40-8-3 (2005)), and requires that "mined lands are reclaimed so as to prevent conditions detrimental to the general safety and welfare of the citizens of the state and provide for the subsequent use of the lands affected." Utah Code §§40-8-2(3) (2005).
37. The Large Mine Notice of Intention as amended and revised contains a reclamation plan for the site which, describes in detail the work that has been determined by the Division as necessary for the site.
38. Utah Code §§40-8-12 (2002) requires that reclamation return the land to a stable, ecological condition compatible with the past, present and probable future uses and

minimizes and prevents future environmental degradation, and prevent future hazard to the public safety and welfare.

39. The Operator should proceed to immediately begin reclamation of the mine sites in accordance with the reclamation plan and the minimum requirements for reclamation and revegetation as set forth in the regulations and the Act.

**COUNT IV (Order to Forfeit Sureties and for Division to Reclaim and Recover Cost and Expenses of Reclamation)**

40. The Division hereby incorporates the allegations of paragraphs 1- 39 hereof and further alleges as follows.
41. The following Certificates of Deposit have been provided as sureties and are held for the Division as security for reclamation of the mine permits: Zions First National Bank certificates 030-930789-0, 030-930033-6 and 030-931018-3 in a total amount of \$410,400.00 (subject to escalation in 1997) held for permit M/049/009; and Wells Fargo Bank certificate 189682 (successor in interest to First Interstate Bank) in the amount of \$39,800.00 held for the Division for Permit M/049/024.
42. Utah Code §40-8-14(6) (2002) provides that if an operator of a mining operation fails or refuses to reclaim as required by the statute and regulations, that the Board may order that the surety filed for purposes be forfeited, and that the necessary reclamation be conducted by the Division, and that the costs and expenses be recovered in a civil action brought by the Attorney General against the Operator.

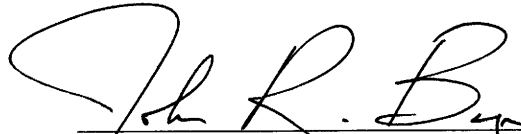
**PRAYER FOR RELIEF**

WHEREFORE, the Division requests that the Board enter the following Order(s):

- A. An Order requiring payment of all penalties and fines assessed against the operators for these mining operations and authorizing the Attorney General to take such action as may be necessary to collect the same, together with all costs, interest, and attorneys fees allowed at law.
- B. An Order withdrawing the Notice of Intention as a result of the Operator's failure to: (a) conduct mining operations in a manner such that reclamation of the site can be accomplished as required by the Act, (b) provide the surety in a form and amount as required by the Act, and (c) for the continued suspension of mining for long in excess of five years without approval and without indication of the ability or intention to complete mining in accordance with the plan.

- C. An Order requiring that the Operators commence immediate reclamation of all pertinent lands affected by the Apex/Burgin, Trixie Shaft, and Trixie West Exploration mining operations.
- D. An Order that in the event the Operators fail or refuse to immediately commence reclamation or to complete reclamation as required, that sureties posted with the Division shall be forfeited and the funds used by the Division to complete reclamation of the lands affected by the mining and the Division shall be authorized to complete the reclamation and to recover all costs and expenses of reclamation from the Operators.
- E. For such additional relief as may be deemed just and equitable under the law and facts as may be adduced in the proceeding herein.

Dated this 11<sup>th</sup> day of July, 2005.



John R. Baza, Director  
Division of Oil, Gas and Mining  
1594 West North Temple, Suite 1210  
P.O. Box 145801  
Salt Lake City, Utah 84114-5801  
Telephone: (801) 538-5340



CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing Notice of Agency Action to recover penalties, withdraw permits, and to require immediate reclamation or forfeiture of the sureties of the Apex/Burgin Mine (M/049/009), Trixie Shaft Mine Area (M/049/024), and Trixie West Exploration Area (E/049/046) to be delivered or mailed by first class mail, postage prepaid, this 11<sup>th</sup> day of July, 2005 addressed to:

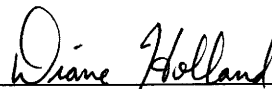
Richard R. Schreiber, President and CEO  
Chief Consolidated Mining Company  
1629 Locust Street  
Philadelphia, PA 19103

Zions Bank  
Payson Branch  
80 East 100 North  
Payson, UT 84651

Wells Fargo Bank  
170 South Main Street  
Salt Lake City, UT 84111

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